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Noted by

26 July 62  
DDCI

Executive Registry

62-5252

MEMORANDUM FOR: Deputy Director (Support)  
SUBJECT: Administration of Fixed Price Contracts  
REFERENCE: Memorandum from General Counsel dated  
16 July 1962

1. This memorandum is for information only.

2. Reference memorandum (attachment A) states that the Director is concerned as to whether or not the Agency in the administration of fixed price contracts makes use of funds authorities which are exempt from outside audit as means of granting relief where it would not be granted in normal Government contract administration.

3. It may be stated categorically that the Office of Logistics does not grant relief to contractors under circumstances where it could not or would not be granted in normal Government contract administration. Any grant of relief is accomplished in accordance with principles set forth in the Armed Services Procurement Regulation (Department of Defense) and the Federal Procurement Regulations (General Services Administration), both of which are used as guides by this Agency as provided in [redacted]. In addition, of course, the principles promulgated by the Comptroller General are closely adhered to. There is no differentiation in the treatment between those contracts paid with unvouchered funds and those paid with vouchered funds. As a matter of fact in cases where any doubt may exist, the Assistant General Counsel, Office of Logistics, has frequently sought the informal advice of members of the staff of the General Counsel to the Comptroller General in order to insure that all contracts which are paid with unvouchered funds are handled in a manner which is compatible with policies established by the Comptroller General for the Government at large.

4. In the case of disputes, the standard contract clause provides for an appeal by the contractor from the decision of the Contracting Officer. This appeal may be taken to the head of the Agency or "his duly authorized representative." It is significant that during the

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SUBJECT: Administration of Fixed Price Contracts

past 7 years, only one case has required the appointment of a Board of Contract Appeals as a "duly authorized representative" to hold a hearing to consider a contractor's appeal from the decision of the Contracting Officer. That Board did not reverse the decision of the Contracting Officer but it did allow, in equity, relief of approximately \$6,000, which was only a small fraction of the amount claimed by the contractor.

5. The Office of Logistics has, as recently as 17 July 1962, denied the request of a contractor for reimbursement for increased costs under a fixed price contract. A copy, attachment B, of the letter to the contractor is enclosed as being representative of this policy.

6. It is the further policy of the Office of Logistics to utilize fixed price contracts to the maximum extent practicable. In general, the prerequisites are that there be available reasonably definite design or performance specifications and that fair and reasonable prices can be established at the outset, such as where:

a. Adequate competition has made initial proposals effective, or

b. Prior purchases of the same or similar supplies or services under competitive conditions or supported by valid cost or pricing data provide reasonable price comparisons, or

c. Cost or pricing information is available permitting the development of realistic estimates of the probable costs of performance, or

d. The uncertainties involved in contract performance can be identified and reasonable estimates of their possible impact on costs made, and the contractor is willing to accept a firm fixed price at a level which represents assumption of a reasonable proportion of the risks involved.

7. When individual requirements do not meet any of the above criteria, authorized variations of the fixed price type of contract are used which provide for price redetermination either downward only or upward and downward.

SUBJECT: Administration of Fixed Price Contracts

8. Examples of items purchased under the policy stated in paragraph 6 are:

<u>Agency Component</u>	<u>Item</u>	<u>Dollar Amount</u>
Technical Services Division		
Office of Communications	Radio Transmitter	
Office of Logistics	Teletype Paper	

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9. As long ago as 1955, there was established in this office a "Procurement Evaluation Committee" for the purpose of providing supervisory review of and to insure that proper procedures are implemented on a continuous basis to carry out established procurement policies. Attachment C furnishes details of the mission of this Committee and is illustrative of one of the management techniques which has been developed to provide the Agency with the mechanics for the proper conduct of the procurement process within its statutory and regulatory authorities. In order that the benefit of all available technical advice may be had, the Office of Logistics does not confine the membership to its own personnel. The Assistant General Counsel assigned to the Office of Logistics is a permanent member of the Committee. The Chief, Industrial Contract Audit Division, and representatives of any Agency component that functions as "technical representative of the Contracting Officer" are advisory members. As an indication of the effectiveness of this Committee, the Comptroller General in his reply to [redacted] in support of the Agency's response to the protest of the award of a contract to another company, expressed approval of the action of the Procurement Evaluation Committee.

10. In addition to the foregoing, all contracts and any amendments thereto, including those which involve increases in contract consideration, are reviewed by the Assistant General Counsel/OL as provided in Logistics [redacted].

[redacted]  
JAMES A. GARRISON  
Director of Logistics

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Attachments:

- Memo fr Gen Counsel dtd 7/16/62
- Ltr to Contractor dtd 7/17/62
- OL/PD Memo No. 62-10

OGC 62-1562

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16 July 1962

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MEMORANDUM FOR:

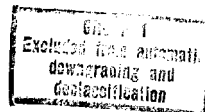


General Carter told me that one of the things that most concerns the Director is whether or not in our administration of fixed-price contracts we are using our funds' authorities which are exempt from outside audit to grant relief under circumstances where it could not be granted in normal Government contract administration. He is aware of the special situation

handled with us and that in that case there were additional new considerations which gave the basis for renegotiating the entire contract price. This does not bother him. I think what we need is a paper describing briefly where we used fixed-price contracts, with some typical examples; our policies (which I believe are as strict as those elsewhere in Government); our system of facts on administration, including legal review, audit, etc. If you have any questions, call me on Wednesday.

/signed/  
L. R. Houston

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24 October 1961

PROCUREMENT DIVISION MEMORANDUM 1 [REDACTED]

SUBJECT: Establishment of Procurement Evaluation Committee

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Procurement Division Memorandum [REDACTED] as supplemented, is rescinded in its entirety and this Memorandum supersedes the same.

a. Establishment of Committee - Membership.

There is hereby established the Procurement Evaluation Committee to consist of the Chief, Procurement Division, Chairman; Deputy Chief, Procurement Division, member; Chief, Contracts Branch, member; Chief, General Products Branch, member; and Assistant General Counsel, member. In order for a meeting to be held, there must be a quorum present of three of the foregoing persons, one of whom must be the Chief or Deputy Chief of the Division. The Secretary to the Committee shall be rotated and selected by the Chief, Procurement Division; he will not be a voting member.

b. Advisory Members.

1. The Advisory Members to the Committee shall be Chief, Industrial Contract Audit Division; Chief, Engineering Section, Contracts Branch; representatives of any Agency component serviced by the Procurement Division that functions as "technical representatives of the Contracting Officer;" also, any Contract Negotiator or Procurement Officer concerned together with the Section Chief responsible for the proposed transaction.

2. The Chief, ICAD will be requested to participate in every meeting when a new Base Contract or any type of cost contract is to be considered. He will be furnished the name of the proposed contractor.

c. Schedule of Meetings.

The Procurement Evaluation Committee shall meet regularly each Tuesday at 10:00 a.m. and Thursday at 2:00 p.m. when there is business to come before it.

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## SECRET

SUBJECT: Establishment of Procurement Evaluation Committee

d. Functions.

1. To be apprised of the factors surrounding the negotiation of all new Base Contracts, and approve such negotiation. When an existing Base Contract is to be replaced with a new Base Contract in order to bring it up to date, it will not be necessary to present this to PEC unless the fee is to be increased or an unusual provision is to be added.

2. To review and determine the method of procurement for all procurement actions in excess of \$25,000.00 except formal advertised procurement or procurement from or through other Government departments, or Task Orders unless the Chief, Contracts Branch deems it desirable. (As to Task Orders see paragraph 5 below).

3. To advise and recommend procurement courses of action in the following situations:

(a) Where complex contract terms and conditions requiring policy guidance are involved.

(b) Where there is a divergence of opinion in any direction (sole source, advertising or negotiation, specification, etc.) between the Procurement Division component and the technical or other requisitioning component involved.

(c) Where there is a flagrant lack of performance on previous contracts or other inadequacy which might affect satisfactory performance on the part of a proposed Contractor.

(d) Where there are problem cases which can not be otherwise resolved involving doubtful procurement justification, marginal contractors, special contractual arrangements involving questions of policy or any other procurement situations where the negotiator and/or Section Chief involved desires the review and guidance of the Procurement Evaluation Committee.

(e) Where the procurement is by grant.

(f) Where the fixed fee negotiation stands at more than 8% or the profits used in fixed-price cost estimates is over 11%. However, the negotiator shall use these percentages as maximums and not as the "going rate." Should the PEC approve a higher percentage than the maximums stated above for use in a specific

**SECRET**

SUBJECT: Establishment of Procurement Evaluation Committee

contract, the negotiator may request PEC to approve the increased percentage of profit with the same contractor in future contracts. If PEC concurs in this, it will normally fix a time limit for the use of such percentage. In the event future contracts are negotiated on authority granted in this manner, the negotiator shall document each such file as to the source of the authority.

(g) Where a quantity discount negotiation is involved and the discount schedule will be set forth in the contract.

(h) (1) Any contract subject to price redetermination.

(2) Separate items which are to be billed at a fixed price will not be included in price redeterminable contracts. (This does not prohibit the inclusion of sub-components or other materials even though costed on a fixed-price basis which are used in performance of the price redeterminable contract).

(i) Where there is a substantial change in the financial or management structure of an existing contractor to the extent that the welfare of the Agency would be jeopardized.

(j) Where there exists any other problem or situation where, in the opinion of the concerned Section Chief, the direction and guidance of the Committee would be desirable.

(k) Where the proposed procurement is based on the formal advertised method in which award is proposed to other than the lowest bidder.

(1) When any bidder or potential bidder makes a protest in connection with award of any purchase.

4. To review proposed procurement actions, regardless of amount, in support of non-clandestine activities to be charged to Confidential (unvouchered) funds in which the materiel to be procured does not in itself possess traceable or sensitive characteristics with which the Agency should not overtly be associated.

5. To review any proposed Task Order or other cost-type procurement when the cost proposal shows either of the following factors:

(a) The total overhead, including G&A, has increased by more than 10% above the final overhead rate as established by DOD or ICAD for the most recent prior period.

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SUBJECT: Establishment of Procurement Evaluation Committee

(b) The total overhead, including G&A, exceeds 150%.

e. Procedures.

1. Meetings will be scheduled directly with the Secretary of the Committee, appointments being made at least 24 hours before the desired meeting time. In the event an emergency meeting is desired, the Secretary of the Committee will ascertain the circumstances and obtain the approval of the Chairman of the Committee before confirming the emergency appointment. The Secretary shall be responsible for notifying Committee members by 4:00 p.m. each day prior to scheduled meeting days, whether any cases have been submitted for review and the name(s) of the proposed contractor; if not, such scheduled meetings shall be considered as automatically canceled. Personnel requiring Committee meetings shall present to the Committee Secretary the Committee copy of the case history to be discussed by 3:00 p.m. of the day prior to scheduled meeting days. Emergency meetings shall be arranged by the Secretary as soon as permission for the meeting is obtained from the Chairman and case histories are to be furnished immediately to the Secretary.

2. The Secretary will be responsible for recording action by the Committee and to reducing its recommendations and directions to writing and obtaining the written approval of the Chairman of such directions. Such directions will be forwarded to the Sections involved.

f. Responsibilities of Section and Branch Chiefs.

1. Obtaining information as to the best probable source and method of procurement (i.e., civilian, military, covert procurement, or contract procurement) and submission to the Committee, when stipulated herein.

2. Presenting to the Committee each proposed procurement action, when stipulated herein, before such action is taken.

3. To review such procurement action prior to execution to assure that such actions are in accordance with the determinations of the Committee.

4. To report to the Committee where its recommendations and findings have been found to be not feasible or practicable of accomplishment and to obtain new determinations and directions.

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4	(Reassigning info - WAC)		
5	ER-file		
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FORM NO. 237 Use previous editions  
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U.S. GOVERNMENT PRINTING OFFICE: 1961 O-587282

MEMORANDUM FOR: General Carter  
THROUGH : General Counsel

MSC/687/26/62

Attached hereto is a memorandum prepared by the Director of Logistics outlining the Agency's system and procedures for the administration of fixed price contracts. You will recall that the Director expressed an interest in this matter at the Executive Committee luncheon on 11 July. Our record is good, and I believe our system will ensure that in the administration of fixed price contracts we do not use our funds authorities to grant relief under circumstances where it could not be granted in normal Government contract administration.

L. K. White

25 JUL 1962  
(DATE)

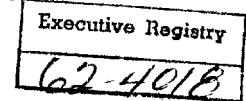
FORM NO. 101 REPLACES FORM 10-101  
1 AUG 54 WHICH MAY BE USED.

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DD/S 62-3149



8 JUN 1962

MEMORANDUM FOR: Deputy Director (Support)

SUBJECT: Status of West Parking Lot

1. This memorandum is submitted for information only.
2. Until about 1 June 1962 it appeared that the contractor work on the West Parking Lot would be sufficiently completed for us to have beneficial use of the lot by 18 June. However, the contractor has been unable to get the concrete work accomplished and there has been little if any progress since the first of the month. It is now estimated that the project is 70% to 75% complete and it is apparent that the work will not be completed prior to 5 July 1962 or the end of the 100 days allowed in the contract. (The contract has a penalty clause of \$75.00 per day.)
3. On 4 June the Bureau of Public Roads Contracting Officer learned that the concrete subcontractor had advised the contractor that he would not do the concrete work. Accordingly the contracting officer notified the contractor to award a new subcontract for the concrete immediately and that all work was to be completed on schedule. The Bureau of Public Roads representatives believe that by expeditious action the contractor (Howard W. Speaks Company of Leesburg, Virginia) can still finish his work by 5 July 1962.



Acting Director of Logistics

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(EXECUTIVE REGISTRY FILE

Logistics)

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MEMORANDUM FOR: ~~General Carter~~ <sup>APC</sup>  
*Ed: Inform DCI*

I advised Mr. McCone some time ago that we expected to be able to use the new West parking lot some time before its final completion, scheduled for not later than 5 July. He has considerable personal interest in this project, and I recommend that he be advised of the delay explained in the attached memorandum.

*To DDCI: I nudged White  
 on this about a week ago as  
 he had advised a staff  
 meeting that the lot would  
 be finished by 1 June.*

[Redacted Signature Box]

L. K. White

12 JUN 1962  
 (DATE)

*DCI advised LK 2 July - per B/K*

FORM NO. 101 REPLACES FORM 10-101  
 1 AUG 54 WHICH MAY BE USED.

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